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Abstract: In recent years, between the European Union and the World Trade Organization has been a great challenge and a particular fervor for international litigation in the free trade sector. On the one hand, we have the American political position that put a veto block for the members of the appellate body, on the other, the EU which does not want to "support" international arbitrations in the sector anymore and the WTO which seeks new ways to continue its work in international economic law. These are topics in continuous investigation towards jurisprudential paths as well as new binding or non-binding acts within the scope of the Union to fill gaps and find new avenues to the litigation sector. China's participation in the Marrakesh agreements, since 2001 (Wu, 2016), was the beginning of the end of the international cooperation mechanism in the field of trade liberalization and above all of the general spirit of the rule of law, casting doubt on the fundamental respect of the principle

of non-discrimination created by the GATT 1947. Reforming the WTO means a new governance of fair and distinct treatment in international trade through new agreements that take sustainable development models seriously while also asking for the support of civil society. The system of multilateralism also at the regional level should arrive at new rules of an international debate that involves citizens as subjects at a global level and as challenges to the law of the European Union.

Keywords: WTO; European Union law; international and European litigation; international rule of law; non discrimination; governance; UN; DSU; panel reports; MPIA; DSB; TSD Chapters; FTAs; ILO; Ukraine-Wood Export Ban; Korea Labor Commitments-TULRAA; Domestic Advisory Groups; enforcement regulation; ACI; Chief Trade Enforcement Officer; Single Entry Point; SPG+; CTEO; TSD complaint; SDGs; trade cooperation.

Introduction

The long-standing dispute resolution system within the WTO has suffered another block in operation in recent years due to the American blockade for the appointment of new members to the Appellate Body (Lehne, 2019; Lo, Nakagawa, Chen, 2020; Hart, Murrill, 2021)[1]. As was obvious, the European Union

1States Trade Representative, Report on the Appellate Body of the World Trade

immediately tried to show its spirit of safeguarding the governance of international exchanges, characterized as mutually advantageous of strategic competition with global value (Prévost, Alexovičová, Pohl, 2019) despite the fact that doubts remained in the litigation sector on international rules.

The European Commission has presented new strategies at an international level (Brownlie, 1998; Allott, 2005; Beaulac, 2007; Chesterman, 2008; Lautenbach, 2013; Crawford, 2014; Keith, 2015; Holterhus, 2019; Schill, 2023). The legal basis of each strategy was based on the international action of the EU at a now global level (Liakopoulos, 2019; Blanke, Mangiamelli, 2021)[2].

On the other hand the UN have taken a position declared the rule of international and domestic law as a:

"(...) governance in which all persons, institutions and entities, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with internationally recognized human rights (Cremona, 2011; Cremona, 2018; Kassoti, Wessel, 2022)[3] (...) the rule of law (...) measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (…)" (Alvarez, 2006; Nollkaemper, 2011; Villalpando, 2013; Alter, 2014; Howse, Ruiz-Fabri, Ulfstein, Zang, 2018; Stoll, 2018; Petersmann, 2020).

Organization, Washington D.C., February 2020: https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf

2See art. 3, par. 5 TEU and art. 21 TEU.

3S/2004/616, Report of the Secretary-General: The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 23 August 2004, par. 6: https://digitallibrary.un.org/record/527647?v=pdf

The results of every international mechanism of a binding nature ensures principles such as fairness, predictability, treatment of one's case based on a level of independence, impartiality of the people who were called to take a position and decide on (Hillmann, 2015).

The guarantee of international rules are enhanced by the rule of law at an international level and as a legitimation of the institutions where the participation of every civil society elaborates within the scope of the EU through procedures subjects of interest.

Associations and citizens define the European trade policy and the own tools such as an international operation that is implemented on the path of justice which includes everything that this path includes, especially access to justice and the resolution of the dispute.

Within this framework, the EU has shown strategic steps for a better functioning of the economy in a transparent and effective way. Disputes based on bilateral, free trade agreements and precise unilateral measures within the context of the Union. These are attempts that try to resolve each dispute with diplomatic means, within forum tables where groups of experts and arbitrators produce their work to arrive at a fair and equitable solution.

The participation of civil society and the principle of enforcement through transparency in the sector of commercial policy (Rubini, 2020)[4] of the EU ensures a precise regulated international dispute for free trade as an expression of the international rule of law. The contribution to the approach of each type of litigation also ensures and follows the steps for the realization of the main objectives for sustainable development according to the 2030 agenda of the UN (Huck, 2022)[5].

The right to appeal as access to justice: The Multi-Party Interim Appeal Arbitration Arrangement (MPIA).

The dispute resolution system at the WTO was based on a multilateral trading pattern (Mavroidis, Sapir, 2021) and rules where disputes were subjected to a procedure that had a binding nature and two levels of judgment, thus respecting international obligations and its enforcement through the interpretation of the relevant Marrakesh agreements (Liakopoulos, 2020b). This was an impartial, independent and quality decision-making system.

4"(…) a momentous period where multiple crises and challenges are significantly crossing with each other: the volatility in international relations, the re-configuration of geo-political leadership, the inefficiency of current trade rules, the crisis of multilateralism and of the World Trade Organization ("WTO"), the rise of preferential trade dynamics, the difficulty of integrating the Chinese economy into the world trading system, the rise of populist, protectionist and isolationist tendencies and of more aggressive industrial policy (…)".

5United Nations General Assembly Resolution of 25 September 2015, Transforming Our World: the 2030 Agenda for Sustainable Development, A/RES/70/1. On the United Nations 2030 Agenda: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf

A multilateralism open to negotiations and new rules of the game, where especially international organizations apply, update and develop climate change through new trade criteria. On the other hand, regionalism of an economic and political nature is based on rules of a global nature through the UN, OSCE, WTO system where the regional free trade areas (EU, ASEAN, Mercosur) have the struggle and concern to deal with sustainable development and climate change, which is worsening year after year.

The American veto for mainly political and less legal reasons used to a multilateral system at the second level of judgment. The blocking of a dispute resolution mechanism system and the adoption of a panel is based to a WTO Dispute Resolution Body (Disputes Settlement Body, DSB), a system that precludes the appeal stage of this report[6].

The European Commission has received criticism and concerns from the American attitude, specifying that this conduct[7] after

6See art. 16, par. 4, del DSU "(…) party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal (…)" and art. 17, par. 1 DSU affirms that: "(…) standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It shall be composed by seven persons, three of whom shall serve on any one case (…)".

7WT/GC/W/752/Rev.2, Communication from the European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore, Mexico, Costa Rica and Montenegro to the General Council, 11 December 2018, p. 1: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=249918&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

2018 has resulted in the agreement of rules and procedures governing the related disputes of Understanding on Rules and Procedures Governing the Settlement of Disputes, DSU[8] thus carrying out an informal process of the WTO dedicating to the functioning of the Appellate Body as a process which in 2019 led to the so-called Walker Principles (Davey, 2022; Wolff, 2022)[9].

The EU based on Art. 25 DSU which states for a: "temporary avenue to enable appeals of panel reports" (Andersen, Friedbacher, Lau, Lockhart, Remy, Sandford, 2017; Bacchus, 2018; Hillebrand Pohl, 2019; Baroncini, 2020). Thus, members of the WTO who are parties to the dispute are allowed to resort to arbitration which facilitates the resolution of the dispute. An arbitration that integrates a multilateral dispute as a useful tool for resolving a dispute according to the Marrakesh agreements and the insurance system of the WTO (Tanaka, 2018).

The arbitration presents itself as an appellate judgment and is based on the Andersen proposal (Andersen, Friedbacher, Lau,

8WT/GC/W/752/Rev.2, Communication from the European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore, Mexico, Costa Rica and Montenegro to the General Council, 11 December 2018; WT/GC/W/753/Rev.1, Communication from the European Union, China, India and Montenegro to the General Council, 11 December 2018: https://docsonline.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=250348,250347,250325,250326,250327,250328,250329,250332,250293,250220&CurrentCatalogueIdIndex=1&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

9WT/GC/W/791, Draft Decision-Functioning of the Appellate Body, 28 November 2019; see also JOB/GC/222, Informal Process on Matters Related to the Functioning of the Appellate Body. Report by the Facilitator, H.E. Dr. David Walker (New Zealand), 15 October 2019.

Lockhart, Remy, Sandford, 2017), where the European Commission presents a model of bilateral agreement with a consequence to build some important elements that must be taken into account. Such as, for example, the decision should have a binding nature according to the WTO system for dispute resolution; any type of decision should be conclusive at a second degree and certainly the participating members who are called upon to decide should be independent, impartial and of good conduct (Pauwelyn, 2019).

In this regard, a model that has a political nature at the European level and relied on the Council of the Union (Mavroidis, 2023)[10] and the European Parliament calling for full support in order to:

"(...) conclude provisional agreements with the our main trading partners to find temporary solutions that preserve the Union's right to the settlement of trade disputes in the WTO through the two binding bodies and the independence and impartiality of arbitrators (…) the central objective of the strategy of EU (…) the establishment of a Permanent Appellate Body (...)"[11].

In 2019, the European Commission concluded a bilateral agreement with Norway and Canada for arbitration and the related appeal (Van Den Bossche, 2023)[12]. The failure to adhere

10 EU Council Conclusions 9753/19, Outcome of the Council Meeting-3695th Council meeting, Foreign Affairs-Trade issues, Brussels, 27 May 2019, p. 3:https://www.consilium.europa.eu/media/39522/st09753-en19-v2.pdf; Council of the European Union, doc. 10905/19, WTO Appellate Body-Interim Arrangement-Endorsement, 5 July 2019; EU Council Conclusions 11255/19, Outcome of the Council Meeting-3708th Council meeting, Agriculture and Fisheries, Brussels, 15 July 2019, p. 11: https://www.consilium.europa.eu/media/41944/st15170_final-en19.pdf

11 European Parliament Resolution of 28 November 2019 on the crisis of the WTO Appellate Body, P9_TA-PROV(2019)0083, par. 5: https://www.europarl.europa.eu/doceo/document/TA-9-2019-0083_EN.html

12 JOB/DSB/1/Add.11, Statement on A Mechanism for Developing,

to the Walker Principles after the American blockade by the general council of the WTO and Art. 25 DSU had a strong interest in the group of members of the WTO thus transforming it into a multilateral instrument.

The Multi-Party Interim Appeal Arbitration Arrangement (MPIA) is concluded at the Secretariat of the WTO (Li, 2020; Kugler, 2021)[13], where 25 Members of the WTO[14] are part, thus forming an arbitration panel of a mechanism that has constituted around ten experts dealing with international economic law[15].

Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes-Interim Appeal Arbitration Pursuant to Article 25 of the DSU, Communication circulated at the request of the Delegations of Canada and the European Union, 25 July 2019 (modified by JOB/DSB/1/Add.11/Rev.1): https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/DSB/1A11.pdf&Open=True; JOB/DSB/1/Add.11/Suppl.1, Statement on A Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes-Interim Appeal Arbitration Pursuant to Article 25 of the DSU, Communication circulated at the request of the Delegations of the European Union and Norway, 21 October 2019.

13 JOB/DSB/1/Add.12, Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU, Communication circulated at the request of the Delegations of Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, the European Union, Guatemala Hong Kong-China, Iceland, Mexico, New Zealand, Norway, Pakistan, Singapore, Switzerland, Ukraine, Uruguay, 30 April 2020: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=263504; Geneva Trade Platform, Multi-Party Interim Appeal Arbitration Arrangement (MPIA), https://wtoplurilaterals.info/plural_initiative/the-mpia/

14 Australia, Benin, Brazil, Canada, China, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Hong Kong-China, Iceland, Macau-China, Mexico, Montenegro, Nicaragua, Norway, New Zealand, Pakistan, Peru, Singapore, Switzerland, Ukraine, the European Union, and Uruguay.

15 JOB/DSB/1/Add.12/Suppl.5, Statement on A Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes, Supplement, Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU, 31 July 2020: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=@Symbol=%20(job/dsb/1/add.12%20or%20job/dsb/1/add.12/*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=tru

The MPIA through various steps included the communication to the DSB. The principles of the arbitration appeal are called: "Multi-Party Interim Appeal Arbitration Arrangement" and are pursuant to Article 25 of the DSU. This is a model arbitration agreement that uses the relevant parts such as the Agreed Procedures for Arbitration under Article 25 of the DSU in Dispute DS party to the composition of the arbitration panel of the MPIA which are part of annex 2 of the document that introduced them[16]. It has as a consequence the temporary solution of the double level of judgment within the system of the WTO. The improvement of the dispute continues through the diplomatic channel as an appellate function[17] where the MPIA is developing a project to reform a permanent court (Brodlija, 2024) in order to improve the efficiency of an appellate system[18].

Efficiency and improvement means a greater number of judges as members of the appeal body and the MPIA arbitrators to a number of ten people. The provisional mechanism also includes the participants of an arbitration which thus expands the panel:

e; About the ten MPIA awards we noticed tha next: Mateo Diego-Fernández Andrade, Thomas Cottier, Locknie Hsu, Valerie Hughes, Alejandro Jara, José Alfredo Graça Lima, Claudia Orozco, Joost Pauwelyn, Penelope Ridings, and Guohua Yang.

16JOB/DSB/1/Add.12, op. cit.

17JOB/DSB/1/Add.12, op. cit., p. 2 and 15: "(…) as long as the Appellate Body is not able to hear appeals of panel reports in disputes among [the participants] due to an insufficient number of Appellate Body members (…) will remain in effect only until the Appellate Body is again fully functional (…)".

18JOB/DSB/1/Add.12, op. cit., par. 3, a p. 2.

"of all participating Members at any time"[19] and giving continuous consideration to the proposals that are presented in 2018 in the Union, within the context of the WTO[20].

IN this way, the activities that are part of arbitration in the MPIA are guaranteed, thus giving the arbitrators the relative power that has to do with the measures of the parties in dispute. The rules are binding, the arbitrators require the relevant organizational measures for both the plaintiff and the defendant with measures that "time limits and deadlines", as well as "the length and number of hearings required"[21] have to do with the appeal procedure.

The measures are proposed during the arbitration thus excluding the violation of Art. 11 DSU[22], as a provision that during the appeal verifies the panel correctly and by carrying out an objective evaluation of issues that verify the methods of the states that reconstruct the facts of the first degree of judgment. Art. 11 DSU calls on the Appellate Body of the WTO for attempts that always have the objective of resolving the dispute (Garcia Bercero, 2020) where the appeal procedure limits the

19JOB/DSB/1/Add.12, op. cit., par. 5, a p. 7.

20WT/GC/W/753/Rev.2, "(…) the independence and impartiality of the Appellate Body (…) efficiency so as to enable it to meet the required time frames (…)", op. cit., p. 1.

21JOB/DSB/1/Add.12, op. cit., par. 12, 5. WT/GC/W/752/Rev.2, op. cit., pp. 2 and 4.

22JOB/DSB/1/Add.12, op. cit., par. 13, 5: "(…) necessary in order to issue the award within the 90 day time-period, the arbitrators may also propose substantive measures to the parties, such as an exclusion of claims based on the alleged lack of an objective assessment of the facts pursuant to Article 11 of the DSU (…)".

questions of law[23].

This is an orthodox practice which usefully maintains the rules of "rt. 11 DSU within the "system" of the MPIA. Thus the judicial economic system safeguards and strengthens the obligation to appeal before the appellate body[24], providing that "those issues that are necessary for the resolution of the dispute"[25].

This relieves the members of the appeal body from the complex single appeal procedure and from the challenges of panel reports. Thus the MPIA allows the possibility of proposals on arbitrators that agree to the adjudicators to exceed the maximum deadline of ninety days to conclude the entire procedure[26].

Procedural efficiency constitutes a phase that limits the level of the appeal as an essential type of dispute to a responsibility of the system of arbitrators and the execution of the MPIA to a series of innovative tools. Thus the appeal procedure of the MPIA allows the adoption of an arbitral award which is binding and which presents before the DSB the Councils and committees of the WTO which manage according to the rules of the

23 See Art. 17, par. 6, of DSU: "(…) appeal shall be limited to issues of law covered by the panel report and legal interpretations developed by the panel (…)". JOB/DSB/1/Add.12, op. cit., par. 9.

24 "The Appellate Body shall address each of the issues raised in accordance with paragraph 6 during the appellate proceeding" (art. 17, par. 12, del DSU).

25 JOB/DSB/1/Add.12, op. cit., par. 10, a p. 5.

26 JOB/DSB/1/Add.12, op. cit., par. 14: "(…) proposal from the arbitrators, the parties may agree to extend the 90 day time-period for the issuance of the award (…)".

Marrakesh agreements in the appeal system[27]. The final arbitral award respects the legal framework of the relative and overall system of multilateralism as a guarantee of the system of the WTO[28].

The related arbitration as an appeal system in the MPIA has not been formally used. The second degree model proposes to the EU to allow the relevant panel in the case for example with Turkey at the appeal level: Turkey- Pharmaceutical Products (EU). The methods of production, import and marketing of pharmaceutical products in Turkey has allowed the EU to reach an agreement with Turkey through the procedure of an appellate arbitrator based on Art. 25 DSU which includes the entire system of the MPIA[29]. Arbitrators within an arbitration panel of the MPIA (Zhou, 2023)[30] allow an arbitral award to exceed the ninety-day timeframe from the start of the appeal arbitration

27JOB/DSB/1/Add.12, op. cit., par. 15: "(…) to abide by the arbitration award, which shall be final. Pursuant to Article 25.3 of the DSU, the award shall be notified (…) the DSB and to the Council or Committee of any relevant agreement (…)".

28"(…) including arbitration awards (…) be consistent with (the WTO A) agreements (…) not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements (…)", art. 3, par. 5, of DSU.

29WT/DS583/10, Turkey-Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products-Agreed Procedures for Arbitration under Article 25 of the DSU, 22 March 2022: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds583_e.htm

30We speak about the award of: Mateo Diego-Fernández Andrade and Guohua Yang. For the third award: Seung Wha Chang, see: WT/DS583/13, Turkey-Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products-Recourse to Article 25 of the DSU Constitution of the Arbitrator, Note by the Secretariat, 4 May 2022.

procedure by rules that are identical to those of the MPIA[31]. In the Turkey: Pharmaceutical Products (EU) case, the award received the legal world with positive comments due to the technicality, also reiterating that Turkey is not in tune with the system of the GATT agreements (Dreyer, 2022; Lester, 2022).

Free trade and latest generation disputes and bilateral activation mechanisms in the European context

The European Commission as protagonist of the EU has the right to conclude new generation free trade agreements also including clauses for the resolution of bilateral dispute resolution mechanisms. These types of mechanisms have the consequence of filling gaps due to the appeal within the WTO and to members who have not joined the MPIA thus blocking the definition of a dispute in the multilateral system as an achievable objective where the third state is in contrast with the Union and the preferential agreements already concluded in this regard.

The objective of the bilateral mechanisms is to move away from the legal framework of the multilateral system towards a vast range of preferential agreements that connect Europe and every other area of the planet according to provisions that do not refer

31 WT/DS583/ARB25, Turkey-Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products (Turkey- Pharmaceutical Products (EU))-Arbitration under Article 25 of the DSU, Award of the Arbitrators, 25 July 2022: https://www.wto.org/english/tratop_e/dispu_e/583-13_e.pdf

to the rules of the WTO but pre-establish the obligation of a bilateral agreement that is analogous to the multilateral system that is applied at a regional level without canons of the WTO and/or of a bilateral agreement that is analogous to a multilateral system with the establishment of panels of the organ of appeal of the WTO (Sacerdoti, 2016)[32]. All types of new generation agreements that include coordination clauses form parallel proceedings also seek to resolve disputes in various treaty systems (Kwak, Marceau, 2004; Furculita, 2019; Boisson De

32See Art. 29.17 CETA: "(...) arbitration panel interprets the provisions of this Agreement in accordance with the customary rules of interpretation of public international law, including those established by the Vienna Convention on the Law of Treaties. The arbitration panel shall also take into account the relevant interpretations formulated in the reports of the arbitration panels and the Appellate Body adopted by the WTO Dispute Settlement Body (…)". Council Decision (EU) 2017/37 of 28 October 2016 on the signature, on behalf of the European Union, of the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States on the other, in OJ EU L11/1 of 14.1.2017: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017D0037; Council Decision of 16 September 2010 on the signature, on behalf of the European Union, and the provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the part 'other (2011/265/EU), in OJEU L127/1 of 14.5.2011: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011D0265; Art. 14.16 of the Free Trade Agreement between the Union and the Republic of South Korea, which affirms that: "(…) an obligation deriving from this agreement is identical to an obligation under the WTO Agreement, the arbitration panel shall adopt an interpretation compatible with the relevant interpretations established by the decisions of the WTO Dispute Settlement Body (…)". Council Decision (EU) 2018/1907 of 20 December 2018 on the conclusion of the Agreement between the European Union and Japan for an Economic Partnership, in OJEU L 330/1 of 27.12.2018: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32018D1907; art. 21.16 of the Agreement between the European Union and Japan for an Economic Partnership affirms that: "(…) the relevant interpretations formulated in the reports of the panels and the Appellate Body adopted by the DSB (…)". Council Decision (EU) 2020/753 of 30 March 2020 on the conclusion of the Free Trade Agreement between the European Union and the Socialist Republic of Vietnam, in OJEU L 186/1 of 12.6.2020: https://eur-lex.europa.eu/eli/dec/2020/753/oj;

Chazournes, 2019; Boisson De Chazournes, Lee, 2022; Galanis, 2023)[33].

These elements of a conventional nature within the scope of the Union and within a legal framework of international economic relations guarantee the clarity, fairness and homogeneity of collaborative commercial exchanges which ensure fast effective procedures that can overcome divergences and which interpret agreements which arise from contracting parties.

Dispute resolutions aim to agree new generation free trade agreements within the scope of the EU (Galanis, 2023) through the system of safeguarding goods and services where the bilateral dispute calls for the system of the WTO and which shares the consultation phase leading to an agreement that is agreed between parties and within an arbitration procedure[34].

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33 See Art. 29.3 of the CETA agreement: "(…) the dispute settlement provisions of this Chapter shall be without prejudice to the possibility of resorting to dispute settlement under the WTO Agreement or any other agreement to which the Parties are signatories (…) where a substantially equivalent obligation exists under this Agreement and the WTO Agreement or any other agreement to which the Parties are signatories, a Party may not report a breach of that obligation in both places. In this case, once the dispute resolution procedure provided for by one of the agreements has been initiated, the party shall refrain from reporting the violation of a substantially equivalent obligation under the other agreement, unless the chosen court is unable, for reasons procedural or jurisdictional procedures other than the conclusion of the proceedings in accordance with Annex 29-A, point 20, to reach conclusions on that complaint (…)". See also art. 14.19 of the agreement EU/Korea: https://eur-lex.europa.eu/resource.html?uri=cellar:a2fb2aa6-c85d-4223-9880-403cc5c1daa2.0022.02/DOC_3&format=PDF; art. 21.27 of the agreement EU/Japan: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02018A1227(01)-20220201&from=EN and art. 15.24 of the Agreement EU/Vietnam: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/vietnam/eu-vietnam-agreement_en

34 See in particular Art. 14.13 of the agreement EU/Korea.

Each arbitration panel adopts in a binding manner and through the relevant arbitration award the parties that are in dispute, thus giving the winner the possibility to suspend the related concessions to a Free Trade Agreements (FTAs) in the judging panel and according to:

"(...) the measure equivalent to the annulment or reduction of the benefits caused by the violation (...) and according to the agreements of the Union to a double level of judgment that takes into consideration the multilateral mechanism for the resolution of related disputes between disputing members (...)"[35].

However, the Trade and Sustainable Development Chapters, "TSD Chapters" which do not exactly agree with the FTAs, as the latest generation agreements of the EU (Hradilova, Svoboda, 2018; Harrison, Barbu, Campling, Rirchardson, Smith, 2018; Cooreman, van Calster, 2020; Mauro, 2023; Schneider, 2024)[36] take into consideration the cooperation of contracting parties involving common political bodies as an expression of civil society and within the management of a dispute on sustainability issues (Vellut, 2022).

New generation agreements as a diplomatic path of continuous cooperation dialogue (Hoekman, Xinquan, Dong, 2021) that respects first of all the FTA and the Free Trade Agreement (Vellut, 2023) contains consultations on every related issue of

35 See Art. 14.11.2 of the agreement EU/Korea.

36 See in particular: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions-The power of business partnerships: together for green and fair economic growth, 22.6.2022, COM(2022) 409, pp. 12-13.
see also the agreement of Paris v. United Nations, Paris Agreement, 12 December 2015: https://www.un.org/en/climatechange/paris-agreement

common interest that is connected with the TSD Chapter and where the parties[37]:

"(...) are required to make every effort to reach a solution that is satisfactory for both (…). The solution is compatible with the activities of the ILO or the relevant multilateral environmental organizations or bodies[38] (...) also engaging the FTAs Committee on Trade and Sustainable Development to examine the issue subject to consultations[39] (…). The party that initiated the procedure can request the establishment of a Group of experts, which examines the pleadings of the parties, arranges hearings, can request information, including from the bodies provided for in the TSD Chapter (…). The parties must then make every effort to take into account the opinions or recommendations of the Group of Experts contained in the final report of the latter[40] (…) implementation of the recommendations of the Group of Experts is monitored by the Committee on Trade and Sustainable Development (…) for the litigation of the Union agreements on issues of sustainability therefore pose an obligation of best efforts for the party whose legislation or conduct is considered to be in conflict with the chapter on trade, environment and fundamental workers' rights, but the adoption of countermeasures is not permitted (...) is a significant accountability of the various bodies established to manage free trade agreements, political agreements and expression of civil society, to overcome situations of friction with new, fairer and more advanced disciplines, capable of complying with the important sustainability commitments signed by the Contracting Parties (...)".

The first complaints have also arrived within the scope of the Union that the bilateral mechanisms of the relevant free trade agreements have been activated[41]. The related requests for consultations such as for example against South Korea which was presented in 2018 and which had as its objective the lack of compliance with the related sustainability obligations are related

37 Art. 13.14.1 of the agreement EU/Korea.

38 Art. 13.14.2 of the agreement EU/Korea.

39 Art. 13.14.3 of the agreement EU/Korea

40 Art. 13.15.2 of the agreement EU/Korea.

41 Disputes under Bilateral Trade Agreements: https://ec.europa.eu/trade/policy/accessing-markets/dispute-settlement/bilateral-disputes/

to the fundamental rights of workers (Korea-Labor Commitments) (Nissen, 2022)[42]. Furthermore, we had the related procedure against Ukraine given that the EU demonstrated its illegitimacy against Kiev for the expropriation of timber and raw wood Ukraine-Wood Export Ban[43]. Both disputes had to do with the African continent and against the Southern African Customs Union due to measures that safeguarded the importation of related cuts of chicken which are frozen, the panel that established SACU-Poultry Safeguards[44] as well as the complaint against Algeria and the series of measures of a North African country hinder free trade with the Union thus respecting the request of the Union to form the relevant arbitration panel, namely: Algeria-Trade Restrictive Measures[45]. Within this framework, the Union as the plaintiff had two reports which were related to the disputes with Ukraine and South Korea due to the enforcement that was manifested by the parties in dispute and the panels[46].

42 Republic of Korea-compliance with obligations under Chapter 13 of the EU-Korea Free Trade Agreement, Request for Consultations by the European Union, Brussels, 17 December 2018: https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/bilateral-disputes/korea-labour-commitments_en

43 Delegation of the European Union to Ukraine, note verbale, 15 January 2019: https://www.eeas.europa.eu/delegations/ukraine_en?s=232

44 Arbitration Panel Established in the Dispute Concerning the Safeguard Measure Imposed by SACU on Imports of Poultry from the EU, Brussels, 8 December 2021.

45 Delegation of the European Union to Algeria, note verbale, 19 March 2021: https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/bilateral-disputes/algeria-trade-restrictive-measures_en

46 In the same spirit see also: DS512, Russia-Measures Concerning Traffic in

The procedures used were the common ones which had to do with the dispute which reached the institution of the panel, i.e. the opening of civil society which resorts to the institution of the amicus curiae, thus forming the judging panel where the parties in dispute and the relevant panel were in agreement with the methods of relative participation in the dispute for the subjects who had nationality in the two parties in dispute through the presentation of "a factual or a legal issue under consideration by the arbitration panel"[47].

The relevant amicus curiae document was sent within three weeks and had a marginal role in the Ukraine-Wood Export Ban case given that in this dispute the brief which was written in the Ukrainian language by the "Ukrainian Association of the Club of Rome" was later translated into English and included by the Panel through the documentation that was used to draw up the relevant report without the parties in dispute referring to the

Transit (WT/DS512/7 of 26 April 2019) (without appeal dispute): https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm; DS567, Saudi Arabia-Measures Concerning the Protection of Intellectual Property Rights (WT/ DS567/R of 16 June 2020) (appealed in April 2022 and then abandoned): https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds567_e.htm;

47 Procedural Information Related to EU-Korea Dispute Settlement on Labour, 19 December 2019; Arbitration Panel Established on Ukraine's Wood Export Ban-Deadline for Submissions, 12 February 2020: https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/bilateral-disputes/ukraine-wood-export-ban_en; Arbitration Panel Established in the Dispute Concerning the Safeguard Measure Imposed by SACU on Imports of Poultry from the EU Brussels, 8 December 2021: https://policy.trade.ec.europa.eu/news/panel-rules-favour-eu-southern-african-customs-unions-safeguard-eu-poultry-cuts-2022-08-03_en

arbitration panel[48].

In Korea-Labor Commitments there were several briefs that were presented in civil society thus respecting the group of experts which concerned the full regard[49] and without an express identifying reference to the amicus curiae where in the report text the panel took its own analysis into consideration[50].

The reference to the litigation of the TSD Chapters underlined the relative possibility where the group of experts asked to receive information from external bodies, international organizations, specialized subjects, fundamental norms and from multilateral agreements that have to do with work and the environment with a way dealing with the dispute thus entrusted to information that is complete and qualified. The wide margin of involvement of the relevant stakeholders who were dealing with the related sustainability issues recognized as a "disciplined" and broad way of litigation on trade, work environment thus assuming a certain autonomy which presents memories that are considered useful for effective management

48Restrictions Applied by Ukraine on Exports of Certain Wood Products to the European Union (Ukraine-Wood Export Ban), Final Report of the Arbitration Panel established pursuant to Article 307 of the Association Agreement between Ukraine, of the one part, and the European Union and its Member States, of the other part, 11 December 2020, par. 478: https://jusmundi.com/fr/document/decision/en-european-union-v-ukraine-ukraine-wood-exports-ban-establishment-of-the-panel-tuesday-28th-january-2020

49Panel of Experts Proceeding Constituted under Article 13.15 of the EU-KOREA Free Trade Agreement (Korea-Labour Commitments), Report of the Panel of Experts, 20 January 2021, par. 99: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_203

50Panel Report, Korea-Labour Commitments, parr. 160-162, 204, 236.

by the expert group (Chamon, 2020)[51].

In both cases of the reports the objectives used in the context of the European Commission tried to analyze its own commercial policy from scratch and in the litigation sector, promoting above the environmental sector and less the work and the social context[52] recalled by the jurisprudence of the WTO Appellate Body which established that:

"(...) the legitimacy and predictability of the dispute resolution system, also paying particular attention to the protection of the right of WTO members to legislate for health, environmental or other legitimate political objectives[53] (…) commitment announced in the trade policy review to support in international discussions on trade and environmental issues (…) an

51 See also Art. 284, par. 5, of the Trade Agreement between the European Union, Colombia and Peru: "(…) may request and receive written communications or any other information from organizations, institutions and persons who have relevant information or specialized knowledge, including written communications or information from part of the relevant international organizations and bodies, on matters relating to the international conventions and agreements referred to in Articles 269 and 270 (…)". Council Decision 2012/735/EU of 31 May 2012 on the signature, on behalf of the Union, and the provisional application of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and the Peru, of the other, in OJEU L 354/1 of 21.12.2012: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32012D0735; Council Decision (EU) 2016/2369 of 11 November 2016 on the signature, on behalf of the Union, and the provisional application of the Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other, to take into account the accession of Ecuador, in OJ EU L 356/1 of 24.12.2016: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016D2369

52 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Trade Policy Review-An open, sustainable and assertive trade policy, COM/2021/66 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0066

53 Annex, Reforming the WTO: towards a sustainable and effective multilateral trading system, 18 February 2021 COM(2021) 66, p. 7: https://eur-lex.europa.eu/resource.html?uri=cellar:5bf4e9d0-71d2-11eb-9ac9-01aa75ed71a1.0001.02/DOC_2&format=PDF

interpretation of the relevant WTO provisions that recognizes the right of members to provide effective responses to global environmental challenges, in particular climate change and the protection of biodiversity (…)" (Pennings, Vonk, 2022; Lepore, Pisano, 2022; Kent, 2023; Campins Eritja, Fernández-Fons, 2024)[54].

The report of the Ukraine-Wood Export Ban case

Measures concerning export restrictions that are adopted by the Kiev authorities we noted in the relevant Report of the Ukraine-Wood Export Ban case of 11 December 2020 for valuable wood where in 2015 the path of the related ten-year temporary ban was followed for raw timber exports (Dolle, Medina, 2020; Makhinova, Shuulha, 2021; Polovets, 2021; Pogoretskyy, 2021; Nedumpara, 2023).

The dispute was based on a preferential agreement where the subject of the dispute had to do with the regulatory framework of the WTO. It also concerned the state that was a member of a multilateral system, thus providing an important piece in the field of multilateral litigation. The choice of the European Commission identified the crisis of the dispute resolution mechanism within the scope of the WTO through the

54Annex, Reforming the WTO: towards a sustainable and effective multilateral trading system, op. cit.,; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030-Bringing nature back into our lives, 20.5.2020, COM(2020) 380: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0380; Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on decent work worldwide for a global just transition and sustainable recovery, 23.2.2022. COM(2022) 66 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A66%3AFIN

examination in the context of an insurance agreement which was oriented towards a diplomatic solution to the dispute.

The main argument for the arbitration panel was to establish the measures created by the Union as measures of a protectionist and pro-industry nature for Ukraine related to wood processing and furniture and justified as necessary for the sustainability of Ukrainian forests, useful to curb deforestation which was susceptible to ecosystem consequences at European and international level. The restrictions used by this type of export violated Art. 35 of the association agreement between the Ukraine and the Union[55].

The related report was of particular interest. It is pursuant of Art. 36 of the agreement and of the general exceptions to the liberalization obligations which in practice refer to articles XX and XXI of the General Agreement on Tariffs and Trade of 1994 (General Agreement on Tariffs and Trade, GATT)[56]. It takes into account the panels of the Appellate Body of the WTO, as requested by Art. 320 of the relevant agreement which states:

"(…) an obligation under this agreement is identical to an obligation under

55Council Decision of 17 March 2014 on the signature, on behalf of the European Union, and the provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, by a party, and Ukraine, of the other, with regard to the preamble, Article 1 and Titles I, II and VII (2014/295/EU), in OJEU L161/1 of 29.5.2014: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014D0295

56See in particular art. 36: "(…) nothing in this agreement shall be construed as prohibiting the Parties from adopting or applying measures consistent with Articles XX and XXI of the GATT 1994 and the related interpretative notes which are incorporated into this Agreement and form an integral part thereof (…)".

the WTO agreement, the arbitration panel shall adopt an interpretation compatible with the relevant interpretation established by [the DSB] decisions (...)".

In this regard, it is enhanced that the commitment of the parties who are contracting and who implement the relevant principle that has to do with sustainable development also puts the arbitration panel in the same spirit where it decided in this regard that:

"(...) the preservation of rare and valuable species (…) are fundamental, vital and important in the highest degree (...)"[57].

This is also referred to in Chapter 13 of the relevant agreement which was related to trade and sustainable development and the relevant context for the provisions that having to do with trade and commercial issues according to Title IV of the relevant agreement[58].

This had as its basis the evaluation of the relative necessity in the face of every obstacle having to do with the exchanges which in practice had to justify[59]. In practice the relevant panel relied on an old jurisprudence, i.e. on art. XX, letter. b) of the GATT 1994 as well as the law of Ukraine which established through Art. 290 of the relevant article[60].

57Panel Report, Ukraine -Wood Export Ban, par. 308.

58Panel Report, Ukraine-Wood Export Ban, par. 251: "(…) persuaded that the provisions of Chapter 13 serve as relevant context for the interpretation of other provisions of Title IV, which allow the Parties to introduce or maintain measures in derogation to Article 35 of the AA, including for environmental reasons based on Article 36 of the AA in conjunction with Article XX of the GATT 1994 (…)".

59Panel Report, Ukraine-Wood Export Ban, par. 332.

60Panel Report, Ukraine-Wood Export Ban, parr. 374-375.

The "right to regulate" expressly codified in the TSD Chapter of the EU/Ukraine Association Agreement is appropriately and correctly used by the Judicial Panel to strengthen the protection of non-trade values in relation to the Union and Ukraine. The important approach of the Arbitration Panel in establishing that Chapter 13 must be considered as a relevant context also for the interpretation of the treaty provisions placed in other chapters of the agreement. This action was identified by the Commission in the new Communication dedicated to the revision of the TSD Chapters[61].

It promotes the integration of sustainability throughout the FTA system, and rejects a reading of the free trade agreements that relegates the consideration of non-commercial values solely within the chapters dedicated to trade and sustainable development. The widespread and systematic application of sustainability rules must, first of all, guarantee the necessary political space[62].

The countries legislate in order to pursue legitimate objectives relating to the environment and to the rules for non-tariff barriers. Efforts must be made to promote the use of

61 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions-The power of business partnerships: together for green and fair economic growth, op. cit., pp. 8-9.

62 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions-The power of business partnerships: together for green and fair economic growth, op. cit., p.8.

international standards to encourage trade and investment in the protection of the environment, in resource efficiency and renewable energy sources. The contractual commitments, therefore agreeing, for example, to make the liberalization of environmental goods and services a priority.

The presence of the TSD Chapter considered the interpretation of provisions of the Association Agreement where the panel justified the second ban which had to do with the export that was placed from Ukraine relating to raw timber. Thus the judging panel considered as discriminatory what the panelists found according to the provision, which was related to the preservation of natural resources and justified by Art. XX, letter. g) of GATT 1994 essentially with Ukraine without other reasons that concerned sustainability as well as trade with timber and the internal needs of the country where the exploitation of a natural resource was a never-ending reality[63].

(Follows): The report of the Korea-Labor Commitments case

Regarding the interpretation and application of Art. 13.4.3. in the free trade agreement between the Union and South Korea, a report was published in the Korea-Labor commitments case of January 2021, forming part of chapter 13 of FTAs. It has to do with trade and sustainable development and concerns the related

63 Panel Report, Ukraine-Wood Export Ban, par. 468.

commitment between the Union and Korea based on:

"(...) respect, promote and implement, in their laws and practices (...) labor standards of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, including subsequent updates (Politakis, 2023)[64] (…) effectively implement the ILO Conventions that Korea and the Member States of the European Union have respectively ratified (…) the commitment to work assiduously to ratify the fundamental ILO Conventions, and the other Conventions classified by the ILO as "updated" Conventions (…)" (Politakis, 2023).

The European Commission asked South Korea to be part of the consultations and the related responses that came from civil society[65] as well as from the European Parliament, thus monitoring Korea's lack of respect for workers' freedom of association and the right to a collective bargaining that was part of a civil society:

"(...) indeed incumbent on the Commission to use the FTA to raise these issues on a formal basis with the Korean government (...) failure of the EU to act in this case, in light of the overwhelming evidence of the breach of Article 13, would undermine the effectiveness of Sustainable Development Chapters in EU's trade Agreements, and of the EU trade policy in general[66]

64 ILO, 110/Resolution I, Resolution on the Inclusion of a Safe and Healthy Working Environment in the ILO's Framework of Fundamental Principles and Rights at Work, 10 June 2022: https://www.ilo.org/ilc/ILCSessions/110/reports/texts-adopted/WCMS_848632/lang—en/index.htm; ILO News, International Labour Conference Adds Safety and Health to Fundamental Principles and Rights at Work, 110th International Labour Conference, 10 June 2022: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_848132/lang—en/index.htm; ILO Declaration on Fundamental Principles and Rights at Work: https://www.ilo.org/declaration/lang--en/index.htm

65 From the EU/Korea Civil Society Forum which was created based on art. 13.13 of FTAs as well as by the National Advisory Group of the Union which was part of the same agreement.

66 Letter to Commissioner Malmström of the Domestic Advisory Groups (DAG) under the EU-Korea FTA, Brussels, 16 December 2016, in European Public Services Union, EU Domestic Advisory Group (DAG) Calls on European Commission to Open Labour Consultations on Trade Union Rights pursuant to the EU-Korea FTA, 21 December 2016: https://www.epsu.org/article/eu-domestic-advisory-group-dag-calls-european-commission-open-labour-consultations-trade-0

(...) the progress made by Korea on the objectives contained in the Chapter on trade and sustainable development were not satisfactory and cases of violation of freedom of association still existed, including worrying examples of detention of trade union leaders and interference in negotiations, which instead (...) in the autonomy of the bargaining parties, and urging the Commission to enter into formal consultations with the government of Korea, in accordance with Article 13, paragraph 14 of the Agreement, and, if such consultations are unsuccessful (…) the Group of Experts in accordance with Article 13, paragraph 15 of the Agreement to intervene and continue the dialogue regarding the failure of the Korean government to comply with some of its commitments and in particular to make continuous and sustained efforts, in line with its obligations under the Agreement, with the aim of ensuring ratification by Korea of the fundamental ILO Conventions which have not yet been ratified (…)" (Kleimann, 2020)[67].

The non-papers that date back to 2017[68] and 2018[69] took into consideration the:

"(...) more assertive use of the dispute settlement procedures[70] (…). In December 2018, the special dispute resolution mechanism envisaged by the FTAs for the issues of Chapter 13 on trade and sustainable development[71] (...) having failed the bilateral consultations with Korea, the European institution requested the formation of a group of experts based on Art. 13.15 of the FTAs (...)"[72].

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67 European Parliament Resolution of 18 May 2017 on the implementation of the Free Trade Agreement between the European Union and the Republic of Korea, P8_TA(2017)0225, para. 5.: https://op.europa.eu/en/publication-detail/-/publication/a10cd120-ac21-11e8-99ee-01aa75ed71a1

68 Non-Paper of the Commission Services, Trade and Sustainable Development Chapters in EU Free Trade Agreements, 11 July 2107: https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf

69 Non-Paper of the Commission Services, Feedback and Way Forward on Improving the Implementation and Enforcement of Trade and Sustainable Development Chapters in EU Free Trade Agreements, 26 February 2018: https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf

70 Non-Paper of the Commission Services, Feedback and Way Forward on Improving the Implementation and Enforcement of Trade and Sustainable Development Chapters in EU Free Trade Agreements, op. cit., p. 7.

71 Republic of Korea-Compliance with Obligations under Chapter 13 of the EU-Korea Free Trade Agreement, Request for Consultations by the European Union, 17 December 2018: https://trade.ec.europa.eu/doclib/docs/2018/december/tradoc_157586.pdf

72 European Commission, EU Moves Ahead with Dispute Settlement over

The South Korean legislation excluded self-employed workers, the authorization of trade unions and the election of their representatives leaving discretion to their South Korean administrative authorities as well as the possibility of choosing their own representatives by the members who join the conflict with the general obligation of Art. 13.4.4. of FTAs that:

"(…) respect, promote and implement the fundamental principles of the ILO as resulting from membership of that Organization and of the Declaration on Fundamental Principles and Rights at Work of 1998 (…) Korea would also have violated the second sentence of art. 13.4.3 (…) had not yet ratified four of the ILO Conventions classified as fundamental: these are the Conventions on forced labor (n. 29, 1930), freedom of association (n. 87, 1948); the right to collective bargaining (n. 48, 1949); the abolition of forced labor (n. 105, 1957) (...)"[73].

The Group of experts' report of January 2021 was incompatible with South Korean legislation, particularly with Art. 13.4.3. of FTAs except the part which was related to the verification of the regulatory requirements by the administrative authorities who were responsible for the necessary certification which was necessary for the registration of new unions[74].

The relevant panel noted that the 2012 ruling of the Korean Constitutional Court regarding the Asian country's law regarding trade unions and labor relations - Trade Union and Labor Relations Adjustment Act, TULRAA was respectful of the free

Workers' Rights in Republic of Korea, 5 July 2019: https://policy.trade.ec.europa.eu/news/eu-moves-ahead-dispute-settlement-over-workers-rights-republic-korea-2019-07-05_en

73 ILO, 110/Resolution I, Resolution on the Inclusion of a Safe and Healthy Working Environment in the ILO's Framework of Fundamental Principles and Rights at Work, op. cit.

74 Panel Report, Korea-Labour Commitments, op. cit., pp. 78-79.

movement guaranteed by the constitution of Korea. It has verified the conditions that had to do with the independence of the trade unions which authorized the illegitimate interference with the principle of workers' freedom of association and the pre-screening which was indispensable for the autonomy of the trade union in the country required the establishment.

The disputing parties did not agree to clarify the group of experts and the application practice of the TULRAA which respected the new unions for a discretionary activity related to the principle of freedom of association.

The Union did not follow the path of incompatibility with South Korean legislation. In fact, Art. 13.4.3. of FTAs, the panel:

"(…) referred to consultative bodies established under Article 13.12 of the EU-Korea FTA for continued consultations (...)"[75].

The consultative bodies as well as the Domestic Advisory Groups (DAGs) had consultative tasks in matters relating to the environment, work as well as the application of sustainable development. The related free trade agreements and next generation of the Union are groups establishing the contracting parties of EU/Korea FTAs according to art. 12.12 which included:

"(…) independent organizations representing civil society, with a balanced participation of organizations from the environmental, labor and business sectors and other interested parties (…)".

The attention of the group of experts has enhanced the obligation of cooperation between the contracting parties where

75Panel Report, Korea-Labour Commitments, op. cit., par. 258.

according to Art. 13.12 of FTAs has concretized the chapter on sustainable development trade thus trying to make the consultancy bodies according to civil society responsible. Respect for the duty of collaboration that began with the Union and South Korea and involvement of subjects relating to issues have to do with sustainability and the content of cooperation approach that was agreed with the partner countries relating to the enforcement of TSD Chapters with the latest generation chords.

The failure to ratify the conventions of the ILO forced the expert group to conclude that Korea had not violated art. 13.4.3.

In this regard, the expert group made,

"(…) continued and sustained efforts' towards ratification of the core ILO Conventions (...)"[76].

The Panel took into consideration the position of the defendant which respected the legal standard given that the relevant provision reported that:

"(...) did not impose an obligation of result but of effort[77] (...) the commitment of the South Korean institutions to ratify the ILO Conventions, although slow (…) the Panel is of the view that Korea's efforts for the past three years satisfy the legal threshold of the provisions (...)"[78].

The relevant report characterized as remarkable (Bronckers, Gruni, 2021; Novitz, 2021) the related dispute as well as the group of experts who developed an activity that was in comparison with the rules of application and the conduct that

76Panel Report, Korea-Labour Commitments, op. cit., par. 293.

77Panel Report, Korea-Labour Commitments, op. cit., par. 288.

78Panel Report, Korea-Labour Commitments, op. cit., par. 288.

judged the climate of collaboration given the ratification on the Korean side and the three of the four conventions of the ILO which had not yet been concluded[79].

On the other hand, the involvement of an Asian government respected what the group of experts established as political result of an outcome that was shared by the disputing parties. Thus, the report of the Korea-Labor Commitments case concerned the legal framework that interpreted and established the definition of the scope of the relevant provisions of the chapter on trade and the related sustainable development of the FTAs as well as the affirmation of the binding force of the related commitments that respected the principles of the ILO regulating that:

"(...) work assiduously to ratify the fundamental Conventions of the ILO and the other Conventions, classified by the ILO as updated Conventions, a hermeneutical result not taken for granted in the debate among experts (...)".

The Group of experts placed the provisions of Chapter 13 of FTAs defining the international legal system and the binding sources of an agreement nature, thus rejecting the examples of soft law, declaring in this regard that:

"(...) it is mandated to clarify and elucidate the meaning of relevant provisions of Chapter 13 of the EU-Korea FTA. The Panel is obligated to follow and apply the general rules of treaty interpretation (…) as set out in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties

79 European Economic and Social Committee, EU-Korea DAG Follows the Developments in South Korea Subsequent to the Report of the Panel of Experts and South Korea's Ratification of ILO Conventions, 24 November 2021: https://www.eesc.europa.eu/en/news-media/news/eu-korea-dag-follows-developments-south-korea-subsequent-report-panel-experts-and-south-koreas-ratification-ilo

(...)"[80].

The Expert Group made use of Art. 31 VCLT (Hollis, 2020)[81] as well as the relevant jurisprudence of the International Court of Justice.

The relevant panels of the WTO as well as the Appellate Body stated that:

"(...) Panel is mindful of the prevailing jurisprudence on Article 31, which requires a holistic approach based on examining the ordinary meaning of the terms together with their context in light of the object and purpose of the treaty, all under the rubric of good faith (…) disproportionate reliance on one particular element may yield a misplaced or inaccurate interpretation (...)"[82].

The expert group continued using Art. 13.4.4 of FTAs and reaching the conclusion that the obligations relating to fundamental workers' rights as well as the ratification of the conventions of the ILO were binding and did not include general soft law assertions thus seeking to prevent scrutiny of the relevant conduct.

At the same time, the South Korean positions[83] "appears to imply an inspiration"[84]. Instead, the Panel stated that:

"(…) the ordinary meaning of "commit to" (...) bind oneself to a course of action (…) represents a legally binding obligation of commitment to respecting, promoting and realizing the obligations arising from membership of the ILO and the 1998 ILO Declaration in relation to the principles concerning the fundamental rights (...)"[85].

The Group of experts took into consideration the binding nature

80 Panel Report, Korea-Labour Commitments, op. cit., par. 42.

81 Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969, UNTS, 1980, Vol. 1155, p. 331.

82 Panel Report, Korea-Labour Commitments, op. cit., par. 46.

83 See in particular: art. 13.4.3 of FTAs.

84 Panel Report, Korea-Labour Commitments, op. cit., par. 125.

85 Panel Report, Korea-Labour Commitments, op. cit., par. 127.

and its depth which applied the principle of integration of a systemic nature according to Art. 31, par. 3, letter. c) CVLT (Hollis, 2020) drafting thus the rules of the FTAs.

The interpretation of freedom of association as well as the panel which recalled the principles of the conventions of the ILO created by the freedom of association committee and the specialized organization of the UN, i.e. the ILO, include the expressions of Art. 13.4.3. of FTAs. In fact, international fundamental rights law is relevant and the ordinary meaning of "respect" is to show respect for refrain from injuring, harming, insulting, interfering with, or interrupting. As a consequence, a commitment to respect the principles related to the right to freedom of association refers to the negative obligation not to injure, harm, insult, interfere with or interrupt freedom of association. It is also appropriate to have regard to the meaning of "respect" in international human rights law. The UN Covenant on Economic, Social and Cultural Rights places an obligation on states, therefore, refrain from interfering with the enjoyment of the rights[86].

Within this framework of positions the fundamental conventions of the ILO, as well as the group of experts rejected the South Korean position regarding the commitment:

"(...) and sustained efforts towards ratifying the fundamental ILO Conventions (...) a lower level of legal obligation (…) Korea's argument that the last sentence of Article 13.4.3 means that a Party is permitted to simply

86Panel Report, Korea-Labour Commitments, op. cit., par. 131.

maintain the status quo or only to make minimal efforts is difficult to reconcile with the ordinary meaning of the terms of the provision (…) make continued and sustained efforts means to take steps forward: standing still, or something akin to that, is not to be counted (...)"[87].

The main task of the group of expert was to "continued and sustained efforts". This also used many times and introduced the "legally binding obligation" of Art. 13.4.3. of FTAs as an element of flexibility which also affirms that:

"(…) the Parties have a certain leeway in selecting specific ways of making such required efforts (…) the standard against which the Parties are to be measured is higher than undertaking merely minimal steps or none at all, and lower than a requirement to explore and mobilize all measures available at all times (...)"[88].

The unilateral nature of the measures created and enforced by the European Union

The rule of international law includes in its nature the safeguarding and respect of international exchanges at a global level as a unilateral instrument that functions as an extrema ratio and that it was not possible to achieve the relative positive outcome of a bilateral dispute and/or litigation towards an obstructionist attitude of the counterparty, thus putting into practice the relevant mechanisms that were agreed upon and which respect the procedures for resolving disputes.

The American blockade for the Appellate Body of the WTO was a temporary tool where through the MPIA and arbitral solutions and Art. 25 DSUs have an important functionality for disputes

87 Panel Report, Korea-Labour Commitments, op. cit., par. 272.

88 Panel Report, Korea-Labour Commitments, op. cit., parr. 274 and 277.

regarding free trade agreements.

The Union at the end of 2019 spoke about the related legislative procedure which aimed to strengthen the so-called Enforcement Regulation (Wouters, Hoffmeister, De Baere, Ramopoulos, 2021)[89].

Equally important is Regulation 2021/167 which was adopted by the European Parliament and the Council on 10 February 2021, where it took into consideration:

"(...) to quickly suspend concessions or other obligations deriving from international trade agreements, including agreements regional or bilateral, where effective recourse to binding dispute resolution is not possible because the third country does not contribute to making such recourse possible (...)[90]. If an appeal under Article 17 of the Understanding on WTO Dispute Settlement cannot be completed and if the third country has not agreed to an interim agreement on appellate arbitration pursuant to Article 25 of the WTO Dispute Settlement Understanding[91] (…) the Commission may adopt appropriate commercial policy measures to safeguard the interests of the Union (…)".

In trade disputes relating to other international trade agreements, including regional or bilateral agreements, if it is not possible to resort to the instrument of dispute settlement the third party country does not take the necessary actions for a dispute

89 Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No. 654/2014 of the European Parliament and of the Council relating to the exercise of Union rights for the application and compliance with international trade rules, Brussels, 12 December 2019. COM(2019) 623: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52019PC0623

90 See the sixth recital of the Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) no. 654/2014, relating to the exercise of Union rights for the application and compliance with international trade rules, in OJ EU L49/1 of 12.2.2021: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0167

91 Art. 3, lett. a bis), of Regulation (EU) 654/2014, as amended by Regulation (EU) 2021/167.

resolution procedure to work, even by unduly postponing the procedure, which is equivalent to not cooperating in the process[92]. The third country does not appoint an arbitrator and there is no alternative mechanism that still allows disputes to be resolved[93].

The related report was also linked to the review of the enforcement regulation. The European Commission justified that the reasons relating to the countermeasures are related to Art. 52, par. 4 of the Draft articles on the responsibility of states for internationally wrongful acts which dates back to the International Law Commission from the August of 2001 (Alland, 2010; Paddeu, 2015; Liakopoulos, 2020a)[94].

The project allowed countermeasures to a binding system affirming that:

"(...) the responsible person does not collaborate in good faith in dispute resolution procedures, thus preventing the injured party from completing them (Weiß, Furculita, 2020)[95] (…) ranging from an initial refusal to

92Art. 3, lett. a bis), of Regulation (EU) 654/2014, as amended by Regulation (EU) 2021/167.

93Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No. 654/2014 of the European Parliament and of the Council relating to the exercise of Union rights for the application and compliance with international trade rules, Brussels, op. cit., p. 2.

94Doc. A/56/10, Report of the International Law Commission on the work of its fifty-third session, 23 April-1 June and 2 July-10 August 2001, Official Records of the General Assembly, Fifty-sixth session, Supplement No.10, pp. 26-30. A/RES/56/83, Resolution adopted by the General Assembly-Responsibility of states for internationally wrongful acts, 12 December 2001.

95Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No. 654/2014 of the European Parliament and of the Council relating to the exercise of Union rights for the application and compliance with international trade rules, Brussels, 12 December 2019, op. cit., p. 5.

cooperate in the procedure, for example by non-appearance, through non-compliance with a provisional measures order, whether or not it is formally binding, through to refusal to accept the final decision of the court or tribunal (…) (…) situations where a state party fails to cooperate in the establishment of the relevant tribunal or fails to appear before the tribunal once it is established (…)" (Liakopoulos, 2020a)[96].

These are circumstances connected with the violation of the principle of good faith and the conduct of a contentious procedure of the Union that comes and finds basis in the enforcement regulation related to countermeasures.

In the investment sector, measures that have to do with the economic sector of the Member States where trade takes place and force the Union to adopt certain acts (Ho, Sattorova, 2021)[97] thus making political choices[98] which can see with a carefully reading the joint declaration of Parliament, Council and Commission relating to the work of the anti-coercion instrument (ACI).

In this regard, it is regulated that:

"(...) the Union maintains its commitment to a multilateral approach to the international resolution of disputes, rules-based trade and international cooperation to achieve the United Nations' sustainable development objectives[99] (...) presentation of the Regulation to counteract the economic

96ILC, Draft Articles on Responsibility of States for Internationally Wrongful Act-General Commentary, in Doc. A/56/10, op. cit., pp. 31-143, p. 137.

97Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries, Brussels, 12 December 2021, COM(2021) 775, art. 1, par. 1, p. 15: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0775

98Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries, Brussels, 12 December 2021, op. cit., p. 1ss.

99Statement by the Parliament, the Council and the Commission (2021/C 49/02), in OJ EU C49/2 of 12.2.2021: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?

coercion of third countries, has consistently declared the need to draft, and then subsequently apply, the new EU instrument in full compliance with the international legal order (…) proposal for the new EU Regulation begins by stating that any action taken pursuant to this Regulation is consistent with the Union's obligations under international law and is conducted in context of the principles and objectives of the Union's external action[100] (...) to the deterrent effect as the main purpose of the new discipline, indicates the use of countermeasures as an extreme, "last resort" option (...)"[101].

Towards civil society cooperation through the Chief Trade Enforcement Officer and the Single Entry Point

Trade liberalization and sustainability was a sector within the scope of the European trade policy which for years has systematically involved stakeholders, thus defining strategies and tools for its implementation and requiring civil society to orient itself towards strategies and political proposals in an autonomous way[102] through positions and negotiations (Bauer,

uri=OJ:C:2021:049:FULL&from=GA

100 Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries, Brussels, 12 December 2021, op. cit., 16ss.

101 Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries, Brussels, 12 December 2021, op. cit., pp. 1-10, in particular the 15th recital affirms that the: "(…) Union should establish countermeasures only where other means, such as negotiations, mediation or the adjudication process, do not lead to the immediate and effective cessation of the economic coercion and to the reparation of the harm caused to the Union or to the its Member States, and where it is necessary to act to protect the interests and rights of the Union and its Member States and this is in the interests of the Union. The Regulation should lay down the applicable rules and procedures for the establishment and application of Union response measures and allow for rapid action where necessary to maintain the effectiveness of those measures (…)".

102 ACI: European Commission, Strengthening the EU's Autonomy-Commission Seeks Input on a New Anti-Coercion Instrument, 23 March 2021: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6804

2015)[103] that review already existing measures and policies[104].

The European Commission involves economic operators and civil society in the enforcement phase through economic agreements that monitor relative compliance with developing countries, international conventions relating to human rights and labour, environmental protection, good governance, tariff preferences which are granted by the Union through the adoption of the relevant Regulation no. 978/2012, as a sector that puts in order the special regime for sustainable development and good governance of developing countries[105].

Respect, safeguard, control, enhance the treaties. The Chief Trade Enforcement Officer (CTEO) since the summer of 2020, where the senior official of the European Commission. It was responsible for the related monitoring and precise application of

103 Transatlantic Trade and Investment Partnership, TTIP: https://www.europarl.europa.eu/meetdocs/2014_2019/documents/deea/dv/11_ttip_20150528/11_ttip_20150528en.pdf; European Commission, Commission to Consult European Public on Provisions in EU-US Trade Deal on Investment and Investor-State Dispute Settlement, 21 January 2014: https://ec.europa.eu/commission/presscorner/detail/en/ip_14_56

104: European Commission, Open Public Consultation on the Trade and Sustainable Development (TSD) Review, 22 July 2021: https://policy.trade.ec.europa.eu/consultations/open-public-consultation-trade-and-sustainable-development-tsd-review_en

105 Regulation (EU) no. 978/2012 of the European Parliament and of the Council of 25 October 2012 relating to the application of a system of generalized tariff preferences and repealing Regulation (EC) no. 732/2008 of the Council, in OJ EU L 303/1 of 31.10.2012: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R0978; Proposal for a Regulation of the European Parliament and of the Council on the application of a system of generalized tariff preferences and repealing Regulation (EU) No. 978/2012 of the European Parliament and of the Council, Brussels, 22.9.2021, COM(2021) 579, recital n. 11, p. 18: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0579

international law agreements of the economy within the scope of the Union. The elements of sustainability that are present in the regime of the GSP+[106] allow the CTEO to effectively and precisely carry out its activity which reaches the end of 2020 in the Single Entry Point (SEP), a website that has established the relevant centralized one-stop shop[107] where companies within the scope of the Union have a central administration relating to work, business and employers associations, trade unions both in the Member States of the EU as also to third states where the contractual commitment with the EU is part of the WTO and to a preferential agreement that compromises access to the market, which commits the sustainability of the TSD Chapters as well as the precise regime for sustainable development and good governance of the SPG+[108].

In particular, the TSD complaint presents to non-governmental organizations the regulations of the member states that are part of the Domestic Advisory Groups or Advisory Groups. These have an internal nature that are created through free trade and

106 European Commission Press Release, European Commission Appoints its First Chief Trade Enforcement Officer, 24 July 2020: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1409; European Commission, Chief Trade Enforcement Officer: https://policy.trade.ec.europa.eu/enforcement-and-protection/chief-trade-enforcement-officer_en

107 European Commission, DG Trade, Access2Markets: https://trade.ec.europa.eu/access-to-markets/en/contact-form#contact

108 European Commission, Working Approaches to the Enforcement and Implementation Work of DG Trade, 16.11.2020: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2134

new generation agreements of the Union as well as by citizens of a Member State and/or its residents who are permanent in that state[109].

These subjects who make use of the SEP have the right to present a collective complaint relating to their different skills and knowledge, thus offering the CTEO a solid and precise path that respects the elements of the TSD Chapter by a third state[110].

The guidelines are of an operational nature. The non-cooperation of liaison between the commission and the subject presenting the TSD complaint allows the services of the European institution the relevant complaint which guides the subjects presenting the collection of data and information as well as the construction of an effective document[111].

The relevant work between the complainants and the commission follows the path of the complaint as the final objective of identifying the legal basis for the complaint, the nature of the commitments, the seriousness of the violations that follow the environment and the workers of the partner country of the Union, as relevant for operators of the Union who invest

109European Commission, Operating Guidelines for the Single Entry Point and Complaints Mechanism for the Enforcement of EU Trade Agreements and Arrangements, 22.6.2022, section 2 "Who can submit a complaint", pp. 1-2: https://trade.ec.europa.eu/access-to-markets/en/form-assets/operational_guidelines.pdf

110European Commission, Operating Guidelines for the Single Entry Point and Complaints Mechanism for the Enforcement of EU Trade Agreements and Arrangements, op. cit. p. 2.

111European Commission, Operating Guidelines for the Single Entry Point and Complaints Mechanism for the Enforcement of EU Trade Agreements and Arrangements, op. cit., pp. 2-4; Annex 2: Practical Guide to Filling out the TSD/GSP Complaint Form, p. 11.

in the third country.

Within this systemic context, the treatment is susceptible and precise for the partner country, where in terms of change respects the sustainability issues that are proposed[112].

The related SEP mechanism aims to provide information for the handling of the complaint. Thus the European Commission implements the values of the international action of the Union which evaluates diplomatic means where relations with international bodies acquire a monitoring character with the conventions and principles of sustainability at the wings of the UN, of the ILO, etc., thus considering the multilateral dispute of the WTO as a type of bilateral mechanism of free trade agreements that trigger unilateral measures[113].

The TSD complaints arise and give the possibility for a complaint to various persons where bodies, organizations of the partner country of the Union respects the sustainability commitments that constitutes the subject of the complaint.

Connected subjects of the Union, as subjects having the right to participate to "justice", they actively implement sustainability obligations on the part of the country where the complainant fully identifies his complaint[114].

112European Commission, Working Approaches to the Enforcement and Implementation Work of DG Trade, op. cit., p. 3.

113European Commission, Operating Guidelines for the Single Entry Point and Complaints Mechanism for the Enforcement of EU Trade Agreements and Arrangements, op. cit. pp. 4-5; Annex 2: Practical Guide to Filling out the TSD/GSP Complaint Form, p. 13.

114European Commission, Operating Guidelines for the Single Entry Point and

The SEP presents itself as a figure of the CTEO where in an institutional way it puts civil society to have a leading role in enforcement relating to the rules of a global framework for cooperation and economic development of sustainability in a global framework where the European Commission through the Communication on the power of trading partnerships took into account the 2030 agenda, multilateral agreements for environmental protection, the fundamental conventions of the ILO, the protection of workers and the Paris Agreement on climate change[115].

The TSD complaints have to do with time frame services of the European Commission and a general rule which verifies the receipt of the relevant complaint where within ten days of submission through the SEP follows the complaint and within 20 days moves on to the finalization and evaluation of a complaint which takes approximately 120 working days to move

Complaints Mechanism for the Enforcement of EU Trade Agreements and Arrangements, op. cit. p. 2: "(…) complainants must provide information about whether they are acting exclusively on their own behalf or if they are representing other interests as well, including interests of similar entities or organisations located in the partner country. In the latter case, they shall fully disclose the identity of that other person/company/association/entity, which shall remain confidential as indicated under section 6".

115 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions-The power of business partnerships: together for green and fair economic growth, 22.6.2022, op. cit., Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation and application of EU trade agreements, Bruxelles, 27.10.2021. COM(2021) 654: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0709; Annex 2: Practical Guide to Filling out the TSD/GSP Complaint Form, pp.13-14.

on to the decision on the next steps to follow. If the 120 days are interrupted, other information is also requested for the complainant within the spirit of the "intergovernmental organization with expertise for the investigation" thus indicating and confirming that the cooperation and concertation of the agenda of the Union is in the stage of continuous promotion and evolution and integration in the sector.

(Follows): The case of the mine workers of Peru and Colombia as a first TSD complaint

The CNV International, a Dutch-based non-governmental organization dedicated to the protection of people's and workers' rights. It has taken the initiative to file a complaint on 17 May 2022 relating to trade and development within the SEP mechanism complaining of non-compliance by the party of Peru and Colombia of the TSD Chapter of the Trade Agreement of the Union.

The related complaint also had as witnesses some Latin American trade unions, two Colombians and one Peruvian[116] where according to the legal bases[117] it laid the foundations to

116CNV International, Our Work: https://www.cnvinternationaal.nl/en/our-work

117Complaint-Single Entry Point, On Non-Compliance by the Colombian and Peruvian Governments of Chapter IX, on Sustainable Development, of the Trade Agreement with the European Union, Submitted by: CNV Internationaal, in support of the Trade Unions: Sintracarbon, Sintracerrejón and Union of Metallurgical Mining Workers of Andaychagua Volcan Mining Company and of the Specialised Companies, Contractors and Intermediary Companies that provide services to Volcan Mining Company-Andaychagua; Submitted to: Chief Trade Enforcement Officer

the IX title of FTAs. This concerned the exercise that was responsible for economic activities for entrepreneurs and private companies as well as compliance with related due diligence standards in the field of fundamental rights (Ollino, 2002; Krieger, Peters, Kreuzer, 2020)[118].

According to the principles of the CTEO as well as the TSD complaint, they targeted the workers of a subcontract that had to do with the mining activity of mines in Latin American countries, i.e. the mines of the Swiss multinational property with the name Glencore. The Swiss company, despite publicly declaring respect for subcontracts, the agreements of the ILO[119], the related Glencore plants, were exploited by local agencies that managed the mines. Workers had approximately 70% of the workforce that was employed in the extraction of deposits in these countries. This is a workforce that respects the salaries of permanent employees of the companies that were part of Glencore which had their own plants. Subcontracted miners worked for a long time without exercising their collective

CTEO, 17 May 2022: https://www.cnvinternationaal.nl/en/our-work/news/2022/may/subcontracting-a-major-breach-of-labour-rights-in-eu-trade-agreements

118 CNV International, Subcontracting: A Major Breach of Labour Rights in EU Trade Agreements, 16.05.2022: https://www.cnvinternationaal.nl/en/topical/news/subcontracting-a-major-breach-of-labour-rights-in-eu-trade-agreements

119 Glencore, Our Code of Conduct: https://www.glencore.com/en/who-we-are/our-code; Glencore, Sustainability Report 202: https://www.glencore.com.rest/api/v1/documents/67a0543aca31dec0a4dba8e30e5b1b96/GLEN_2021_sustainability_report.pdf

bargaining rights, thus suffering fatal accidents at work.

Outsourcing the labor was motivated by local companies thus hiring personnel who were specialized in the sector and according to the methods used to reduce the cost of labor. Subcontract workers perform tasks compared to employees in local companies paid on average 30% less as discriminatory treatment. The intention exercises its right to outsourced workers who are pressured to abstain, especially by employment agencies and due to the non-renewal of the relevant contract[120].

The related complaint was based on Articles 267, 269, 271 and 277 of the TSD Chapter of the commercial agreement with the Union which regulated that Contracting Party has undertaken to promote and apply effectively in its laws and in practice as well as in its entire territory the internationally recognized core labor standards, as defined in the Fundamental Conventions of the International Labor Organization[121], as well as freedom of association and the effective recognition of the right to collective bargaining.

The elimination of discrimination in matters of employment and profession and the practice of subcontracting workers, although formally prohibited and sanctioned by the internal regulations of

120CNV International, The Unequal Treatment of Sub-contracted Workers in the Mining Sector, 2022: https://www.cnvinternationaal.nl; European Commission, Ex Post Evaluation of the Implementation of the Trade Agreement between the EU and its Member States and Colombia, Peru and Ecuador, Final Report-Volumes I, II and III, January 2022: https://policy.trade.ec.europa.eu/analysis-and-assessment/ex-post-evaluations_en

121Art. 269, par. 3, of the EU/Colombia/Peru/Ecuador Trade Agreement.

Colombia and Peru, sees both national systems incapable of fully implementing their respective disciplines, penalizing precarious workers and violating the core labor standards of freedom of association and collective bargaining and the prohibition of discrimination.

Moreover, conflicts with Art. 277 of the FTA between the Union, Colombia and Peru, encourages trade or investments by lowering the levels of protection offered by their legislation on the environment and labor. None of the Parties renounces or otherwise derogates from their legislation in environmental and labor matters in such a way as to reduce the protection offered by this legislation, with the aim of encouraging trade or investment[122].

It is underlined that a Contracting Party cannot effectively apply its own legislation in this field of environment and work, with its prolonged or recurring action or inaction, in such a way as to influence trade or investments between the Parties[123]. It also implies non-compliance with tart. 267, which requires, among other things, compliance with the commitments deriving from the priority and updated ILO Conventions[124]. The obligation of companies to minimize human rights risks, since failure to reduce precarious work would mean complicity in rights violations. Shortly, the use of precarious work beyond the

122Art. 277, par. 1, of the EU/Colombia/Peru/Ecuador Trade Agreement.
123Art. 277, par. 2, of the EU/Colombia/Peru/Ecuador Trade Agreement.
124Art. 267, par. 2, lett. b), of the EU/Colombia/Peru/Ecuador Trade Agreement.

necessary limits violates human rights as well as trade union rights and the right to equality[125]. The due diligence is attributable to "best commercial practices related to corporate social responsibility the Contracting Parties have undertaken to promote[126].

The TSD complaint within the SEP mechanism is important because it includes international rules that reflect on the responsibility of operators who are employed in the economic sector as well as carry out for civil society an interpretation that applies to these rules by reference to the relevant objectives of energy policy, the green economy of the Union and the raw materials that are extracted in Colombia and Peru and then exported to the territory of the EU, thus favoring the energy sector as well as production and energy saving. This remains the case and it is unacceptable to pursue sustainability objectives at an internal level where the European market allows resources from partner countries that extract and exploit workers, especially precarious workers.

125Complaint-Single Entry Point, On Non-Compliance by the Colombian and Peruvian Governments of Chapter IX, on Sustainable Development, of the Trade Agreement with the European Union, op. cit., p. 31.

126Art. 271, par. 3, of the EU/Colombia/Peru/Ecuador Trade Agreement.

Concluding remarks

The European institutions, civil society, the commercial policy sector within the scope of the Union act in an effective, transparent way promoting third states and international organizations (Biukovic, 2012; Bianchi, Peters, 2013; Organ, 2017; Hofmann, Leino-Sandberg, 2019) to know well the substantive rules and procedures for participation in the trade policy of the Union.

The international rule of law, the principle of transparency (Kanetake, 2012; Mutua, 2016; Peters, 2016) within civil society traces back to objectives that are included through the Commission Communication on the review of the Union's trade policy[127], on the agenda for WTO[128] reform as a European review that strengthens the trade partnerships of the Union[129]. The commitment that began in 2015 through the related document "Trade for all"[130] reread in the 2018 Action Plan and

127Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Trade Policy Review-An open, sustainable and assertive trade policy, op. cit.

128Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Trade Policy Review-An open, sustainable and assertive trade policy, op. cit.

129Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions-The power of business partnerships: together for green and fair economic growth, 22.6.2022, op. cit.

130Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions-Trade for all: towards a more responsible trade and investment policy, Brussels, 14.10.2015, COM (2015) 497: https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX%3A52015DC0497

on the TSD Chapters[131] as well as in the 2021 strategy for a sustainable trade policy open for the Commission, involves the civil society a path to a transparent trade policy[132]. The preparation procedures, the application of international economic law instruments, access to the relevant documents are indispensable elements for the participation of a natural or legal person who define the trade policy of the Union within a reform of a multilateral system of trade where the European Commission strengthens the transparency rules of the WTO by providing access to documentation, domestic regulations, public participation using digital means which thus allows the work of various committees and councils of the WTO.

The committee within a multilateral system, the WTO Consultative/Advisory Committee includes representatives of businesses and civil society as privileged subjects on topics where the functioning of a multilateral system expands its legal framework to global governance[133].

131Non Paper of the Commission services, Feedback and Way Forward on Improving the Implementation and Enforcement of Trade and Sustainable Development Chapters in EU Free Trade Agreements, 26.02.2018, pp. 11-12: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022IP0354&from=EN

132Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Trade Policy Review-An open, sustainable and assertive trade policy, op. cit.

133Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Trade Policy Review-An open, sustainable and assertive trade policy, op. cit., p. 16.

Communication for the strengthening and contribution to trade agreements for sustainable development has a central and important character for the processes of integration and above all transparency in civil society[134] by manifesting and strengthening the consultative groups, free trade agreements, consolidating the transparency mechanisms and the role of the GCI towards the constituents of trade agreements[135] as provided for in the Agreement on Trade and Cooperation between the Union and the United Kingdom (Romanchyshyna, 2023)[136].

Civil society and above all the primary role of the European Commission in the sector of compliance with international obligations and the principle of sustainable development to a trade policy as a strategy that identifies and overcomes the crisis of disputes of the WTO make the road more complex and challenging of commitment and success towards a civil society where the fair and just treatment of global economic governance lays the foundations for greater commitment and future

134Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions-The power of business partnerships: together for green and fair economic growth, op. cit.

135Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions-The power of business partnerships: together for green and fair economic growth, op. cit.

136See artt. 12-14 of Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 149, 30.4.2021, p. 10–2539.

integration within the Union.

The international rule of law, especially in the sector of international trade, provides a contribution to various Sustainable Development Goals (SDGs) which are part of the United Nations 2030 Agenda. The collected strategies are more oriented and concluded within objective 16 which promotes peaceful societies for sustainable development by guaranteeing access to justice and effectively building all levels in objective 17 which seeks to strengthen partnership global in the field of sustainable development. The protagonists in a profitable way and within an institutionalized regulatory framework continue the dialogue with the partners of the EU where the path of diplomacy and conflict situations follow trade and the continuous opening of markets as tools of peace and development, of equity, economic prosperity as the basis of integration according to the spirit of the Union and as a challenge of continuous evolution.

A continuous open debate where the model of the Union was called upon to address problems on commercial policy which are part of an economic order of international cooperation concerns emergency zones and phases, state aid to businesses, an environment in continuous crisis, subsidies and public companies, etc. to a continuous development in commercial relations towards global trade.

Perhaps we are faced with a “continuous war” especially in the sector of subsidies from countries of origin in favor of stronger states where the autonomy of the Union requires many discussions regarding a policy that is not always structured where the dialogue, above all political and less legal is continually evolving and important. The old federalism model is now far from a pragmatism and an ideology where it overcomes the principle of humanity and exits from the situation of the intergovernmental method which favors the individual states which in the majority threaten through the right to veto and many times condemn the Union to a situation of non-development, thus stopping the adoption of necessary and emergency measures. There are many crises. They will always be present and will continue with various faces and the contradictory signals between the states will be a reality where the Union will always find itself in search of a new stability, autonomy, global process which at the moment dedicates time in this path of evolution.

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